

THE HIGH COURT

Record No. 2025 No. 316 COS

IN THE MATTER OF ARENA CAPITAL PARTNERS LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2014

AFFIDAVIT OF SHANE MCCARTHY

I, **Shane McCarthy**, Chartered Accountant of KPMG, 1 Stokes Place, St. Stephen's Green, Dublin 2, aged eighteen years and upwards **MAKE OATH** and say as follows:-

1. I am a chartered accountant in the firm of KPMG, 1 Stokes Place, St. Stephen's Green, Dublin
2. I make this affidavit from facts within my own knowledge save where otherwise appears and whereso otherwise appearing I believe the same to be true and accurate.
2. By Order of this Honourable Court made on 12 September 2025, I was appointed as examiner, on an interim basis, to Arena Capital Partners Limited (the "**Company**"). By further Order of this Honourable Court made on 10 October 2025, I was appointed as examiner to the Company. I beg to refer to copies of the said Orders when produced.
3. By further order of this Honourable Court made on 17 October 2025, the Court, *inter alia*, extended the period of time for the filing of my report pursuant to section 534(2)(b) of the Companies Act 2014 (the "**Act**") to 20 November 2025, being day 69 of the examinership. By further Order of this Honourable Court made on 20 November 2025, the Court, *inter alia*, extended the period of time for the filing of my report pursuant to section 534(2)(b) of the Act to 19 December 2025, being day 98 of the examinership. The Court also ordered that the period of Court protection be extended up to and including that date, and listed the matter for mention on 16 December 2025. I beg to refer to copies of the said Orders when produced. I also beg to refer to the pleadings and proceedings had herein to date when produced.

4. I also beg to refer to a booklet of exhibits, pinned together and upon which marked “**SM5**” I have signed my name prior to the swearing hereof (the “**Booklet**”).
5. I have previously provided the following three reports to this Honourable Court in the context of the examinership:
 - (a) the first presented at the hearing of the Petition on 10 October 2025 from me in my capacity as then Interim Examiner which set out the work carried out between 12 September 2025 and 6 October 2025 (my “**First Report**”);
 - (b) the second presented when the matter was before the Court on 17 October 2025 which set out the work carried out between 7 October 2025 and 16 October 2025 (my “**Second Report**”); and
 - (c) the third presented when the matter was last before the Court on 20 November 2025, which set out the work carried out between 17 October and 18 November 2025 (my “**Third Report**”).

I beg to refer to copies of my First, Second and Third Reports when produced.

Current Financial Position of the Company

6. Since the date of my Third Report my team and I have continued to review weekly cashflows prepared by the Company. To date, trading performances have been in line with the forecast for the protection period. Cash at bank is currently approximately €1.8 million. All Revenue tax filings and payments are up to date for the examinership period.

The Investment Process

7. In my Third Report, I provided an update to this Honourable Court on the progress I had made towards securing an investment in the Company which would be of a value sufficient to enable me to formulate proposals for a Scheme of Arrangement for the Company. I beg to refer to a copy of a further report dated 4 December 2025 (a copy of which is located at **Tab 1** of the Booklet) (my “**Final Report**”), in which I provide a further update on the investment process from 19 November 2025 to the date thereof.
8. In my Third Report, I described my engagement with a number of preferred bidders who had shown credible interest in acquiring some or all of the Company’s business segments. The number of credible bidders facilitated a phased, competitive investment process which culminated in my identification of two bidders having made strong offers to acquire separate parts of the Company’s business, one of whom bid to acquire the Company’s Operations and

Maintenance business, the other of whom bid to acquire the balance of the Company's undertaking. These bidders carried out comprehensive due diligence exercises and engaged tax and legal (including competition law) advisors in relation to the proposed transactions. My team and I have facilitated visits by these bidders to the Company's premises in Ireland and the UK and have been in regular contact with them and their advisors over the past number of weeks with a view to concluding a transaction. My team and I engaged with our solicitors and KPMG Corporate Finance to prepare draft:

- (a) documentation to give effect to these transactions and have advised on the various regulatory approvals (both in Ireland and abroad) based on the identity of the proposed counterparties;
- (b) proposals for a scheme of arrangement (while acknowledging that such proposals could only be finalised on entry into a binding investment agreement); and
- (c) revised valuations of certain of the Company's business segments (namely the Investment Property and Renewable Energy businesses). This valuation exercise identified further liabilities of certain of the Company's subsidiaries (in connection with the Italian Wind and Solar Businesses), and have contributed to my forming a more accurate picture of the Company and its subsidiaries' financial positions

Accordingly, I confirm that the investment process was at a well-advanced stage. Throughout this process, my focus was on devising a scheme of arrangement that ensured the future viability of the Company and its business, and ensured that the maximum dividend return to creditors was achieved. In seeking to ensure that any Scheme of Arrangement I would propose was in the best interests of the creditors, my staff and I reviewed and assessed all offers from interest parties against the following key benchmarks:

- (a) independent valuations of each business segment prepared by KPMG Corporate Finance; and
- (b) the value that would be attainable by selling the Company's individual business segments on a break-up basis based on the best offers received for each segment from interested parties.

9. At paragraph 6 to my Affidavit sworn on 18 November 2025, I confirmed that should I at any stage form the view that I would be unable to reach agreement on an acceptable compromise or to formulate Proposals, I would inform this Honourable Court immediately and seek to have my appointment discharged.

10. As is clear from the foregoing, I have made significant efforts to secure an investment of the scale necessary to fund a scheme of arrangement for the Company. However, despite these efforts, a funding gap remains. Accordingly, where it has not been possible to execute a binding investment agreement, and in light of the limited period of Court protection remaining available to the Company, I have formed the opinion that I am unable to formulate proposals for a scheme of arrangement and as a consequence, there is no longer any reasonable prospect of survival of the company and the whole or any part of its undertaking as a going concern. Based on the investment process which I have carried out, I have concluded that the best interests of the creditors would be served by separate realisations of each of the Company's business segments on a break-up basis (as noted at paragraph 2.5 of my Final Report). My engagement with the bidders who engaged in the investment process, including my discussions with them and understanding of the due diligence which they have carried out, indicates that it should be possible to contract for the sale of these business segments before Christmas. Consequently, I believe that the protection of this Honourable Court should be brought to an end and that by reason of its insolvency, the Company should be wound up.

Creditors

11. Over the course of my appointment as examiner (both on an interim and confirmed basis), my staff and I have made significant inroads in establishing and agreeing creditor claims. In this regard, my staff and I have worked closely with the Company to engage with brokers, trustees and individual noteholders to establish a process for agreeing their claims. To support this effort, a dedicated mailbox was established, details of which were provided to all brokers and trustees, and to as many individual noteholders as could be identified. As of the date of swearing hereof, in excess of 5,900 emails have been received through this dedicated mailbox.
12. As of the date of swearing hereof, I confirm that I have received claims from 1,540 creditors of the Company. My team have been able to agree 1,459 of these by reconciling the claims to balances calculated by the Company as owing as at the date of the presentation of the Petition herein (12 September 2025). Accordingly, I have made significant progress in identifying and agreeing the creditors' 95% of the creditors' claims against the Company. Should this Honourable Court deem it appropriate to appoint me as liquidator of the Company, I believe that I am uniquely placed to conclude agreement on the remaining 5% of claims efficiently.

Investigation of transactions

13. In my Third Report, I updated this Honourable Court as to the progress of my investigation into the transactions identified in the IER as potentially meriting further attention should my appointment as examiner be confirmed. By way of further update, on 24 November 2025, I

wrote to each of the directors of the Company and to Mr Skelly, the Company's CFO. I beg to refer to copies of these letters, which are located at **Tabs 2 to 4** of the Booklet. In that correspondence, I advised the recipients that I had no further queries in relation to the "Dividend Payment" but that I had concerns regarding two aspects of the "**AP AHL Transaction**" (being the acquisition by the Company of the entire issued share capital in Arena Property Acquisitions Holdings Limited), namely:

- (a) the ability (from a legal perspective) of the Company to make an intercompany loan available to Arena Property Acquisitions Limited; and
- (b) the reasonableness (from a commercial perspective) of the interest rate charged by the Company on that loan.

14. I further advised the recipients that, as indicated in my Third Report, should my conclusions on these transactions indicate an arguable case for liability on their part, it would be necessary for me to consider the assets that might be available, from each of them, to meet any such claim by a liquidator. In this regard, I requested that they return a completed statement of their affairs to me. I further provided them with an opportunity to comment on my preliminary findings.
15. On 27 November 2025, my solicitors received a response from Arthur Cox LLP ("**AC**"), solicitors for the Company (a copy of which is located at **Tab 5** of the Booklet). AC noted that while my letters of 24 November 2025 were not addressed to the Company, they had been instructed to write on the Company's behalf as the Company believed that it was best placed to address the issues raised. AC provided a number of responses to the issues raised in my correspondence and they also provided new documentation for me to consider. As of the date of swearing hereof, I have received initial privileged advices from my solicitors, which advice was limited in scope to how these issues could have been treated in the context of any scheme of arrangement that might have been proposed as part of the examinership.
16. On 3 November 2025, I received a letter from Mr Skelly in his personal capacity (a copy of which is located at **Tab 6** of the Booklet). I have shared a copy of this letter with my solicitors.
17. Due to the time-limited nature of examinership, and due to the fact that my staff's and my primary focus has, of necessity, been on formulating proposals for a scheme of arrangement, it has not been possible to reach a final view as to the lawfulness of the AP AHL Transaction, or any remedies which may be available to a liquidator of the Company in respect of it. However, if this Honourable Court determines to appoint a liquidator to the Company, such liquidator will have the time available to them to engage in a process that will lead to determinations of fact (including if necessary by the taking of sworn evidence, whether oral or on affidavit) which

could not be made during the examinership. Should I be appointed as liquidator of the Company, I acknowledge that I will be required to reach final conclusions on these matters in the interests of creditors. My staff and I have reviewed voluminous documentation in relation to the APAHL Transaction and have had the benefit of detailed legal analysis from my solicitors, who are familiar with the legal issues arising. I confirm that having reviewed extensive documentation in relation to the APAHL Transaction as well as having taken detailed legal advice, I am well placed to determine these issues efficiently in the interests of the Company's creditors.

Notice Parties

18. Pursuant to the Order this Honourable Court (Oisin Quinn J.) made on 10 October 2025, it was ordered that the following parties would be notice parties to the Proceedings:

- (a) the Revenue Commissioners;
- (b) Simmons & Simmons (Ireland) LLP; and
- (c) Lacy Walsh LLP.

I confirm that notice of the within application was sent by email to these parties (as well as to AC as solicitors for the Company) at 18.30 on 4 December 2025. In this regard, I beg to refer to the Affidavit of Service of Joshua Kieran-Glennon sworn 5 December 2025 when produced.

Conclusion

Accordingly, for the reasons set out above I pray this Honourable Court for the orders set out in the *Ex Parte* Docket herein and I believe I am well placed to act as liquidator without exposing the Company's creditors to the unnecessary duplication of cost, time and work which would inevitably attend the appointment of another person as liquidator to the Company.

In that regard, I confirm that I am willing to act as liquidator of the Company if so appointed by this Honourable Court. Given:

- (d) the deep knowledge of the Company and its business which I have developed through my implementation of the investment process, site visits and regular meetings with its management team;
- (e) my engagement with credible bidders who have completed due diligence and are well positioned to transact quickly in respect of the Company's assets;
- (f) the volume of creditor claims which I have agreed; and

(g) the significant progress I have made in investigating the APAHL Transaction,

19. In this regard, I beg to refer to my Affidavit of today's date when produced, which confirms my qualification and willingness to act as liquidator of the Company if so appointed.

SWORN before me by the said **SHANE MCCARTHY**

This day of December 2025

at

in the City of Dublin before me a Practising Solicitor who is personally known to me,

or

who is identified to me by _____ who is personally known to me

I certify that I know the deponent

or

whose identity has been established to me before the taking of this Declaration by the production to me of passport/driver's license no _____ issued on _____

by the authorities of _____ which is an authority recognised by the Irish Government and containing a photograph of the deponent.

Shane McCarthy

Practising Solicitor

Print Name of Practising Solicitor

Filed this day of 2025 by McCann FitzGerald LLP, Solicitors for the Examiner, Riverside One, Sir John Rogerson's Quay, Dublin 2.

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IN THE MATTER OF THE COMPANIES ACT 2014

EXHIBIT “SM5” referred to in the affidavit of
Shane McCarthy sworn on ____ December 2025

Deponent

Practising Solicitor/Commissioner for Oaths

McCann FitzGerald LLP
Solicitors for the Examiner
Riverside One
Sir John Rogerson’s Quay
Dublin 2